UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,441	01/23/2002	Vedvyas Shanbhogue	2207/13057	1964

25693 7590 09/06/2005

KENYON & KENYON (SAN JOSE)
333 WEST SAN CARLOS ST.
SUITE 600
SAN JOSE, CA 95110

EXAMINER	
FRANCIS, MARK P	
ART UNIT	**PAPER NUMBER**
2193	

DATE MAILED: 09/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/052,441	SHANBHOGUE ET AL.	
	Examiner	Art Unit	
	Mark P. Francis	2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 June 2002*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This action is responsive to the amendment filed June 15, 2002.

2. Per applicants' request, claims 4,11,21,22 and 23 have been amended.

Response to Amendments

3. The rejection of claims 1,9, and 18, under 35 U.S.C. 112 second paragraph as being indefinite for not specifying which software component (first or second) of the current version format will receive the translated messages are withdrawn in view of applicant's response.

The rejection of claim 1,9, and 18 under 35 U.S.C. 112 second paragraph, as being indefinite for failing to define "current version format" are withdrawn in view of applicant's amendment.

The rejection of claims 3,10, and 20, under 35 U.S.C. 112 second paragraph as being indefinite are withdrawn in view of applicant's response.

The rejection of claims 4,11, and 21, under 35 U.S.C. 112 second paragraph as being indefinite is withdrawn in view of applicant's amendment.

The 35 U.S.C. 101 Non-Statutory rejection of claims 22 and 23 are withdrawn in view of applicant's amendment.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-3 & 5, 8-10 & 12,15-20, 22 & 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Fiske.

With respect to claims 1,9, and 18, Fiske teaches a method of upgrading a computer system having a first software component and a second software component, said first and second software components operating at a current version (See Col. 1, lines 59-63) said method comprising:

upgrading the first software component to an upgraded version (See Col 1,lines 59-61 and Col. 2, lines 25-29); and

validating the performance of the upgraded first software component, said validating comprising translating messages originating at the first software component from an upgraded version format to a current version format. (See Col. 3, lines 54-62).

As previously stated above for claim 1, claims 9 and 18 are computer systems that incorporate the methods of claim 1.

With respect to claims 2 and 19, Fiske discloses the methods of claims 1 and 18, wherein said computer system comprises a first processor (See Fig1, element labeled Processor 1) executing the first software component and a second processor (See Fig. 1, element labeled Processor 2) executing the second software component.

With respect to claims 3, 10, and 20, Fiske teaches the method of claim 1,9, and 18, wherein the first software component comprises at least one interface (Col 3, lines 50-53), and said upgrading comprises upgrading the interface.

With respect to claims 5 and 12, Fiske teaches the method of claims 4,11 wherein the compatible version is the current version. (See Col 5, lines 6-14)

With respect to claims 8 and 15, Fiske teaches the method of claims 1 and 9, further comprising upgrading the second software component to the upgraded version if the validating is acceptable. (See Col 2, lines 24-30).

With respect to claim 16, Fiske discloses the computer system of claim 9, wherein said first and second processors comprise a fault tolerant system. (See Col. 3, lines 11-22).

With respect to claim 17, Fiske discloses the computer system of claim 9,wherein said first and second processors comprise a multi-processor system. (See Col 3., lines 8&9)(See Fig 1, Processor1 and Processor2).

With respect to claim 22, Fiske discloses A fault tolerant computer system comprising a software component adapted to be used in said fault tolerant computer system, said software component furhter comprising:

An interface;(See Col 3, lines 50-52) and

A translation function;(See Col 3, line 55)

Wherein said translation function translates messages from said interface to a version common to all other software components of the computer system. (See Col. 3, lines 54-62).

With respect to claim 23, Fiske teaches fault tolerant computer system of claim 22, wherein said interface is upgraded.(Col 3:54-62, "...a graphical user interface (GUI)....transmitting the upgraded software...")

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 4, 11, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiske in view of Apfel (5,974,454).

As set forth above in the rejection of 35 U.S.C. 102,

With respect to claims 4,11,and 21, Fiske shows a software upgrading method in accordance with claims 1, 9,and 18, respectively, but does not show querying any version of the first software component and the second software component; and determining a compatible version for the computer system.

Apfel teaches a method of querying any version of the first software component and the second software component; (See Col 2. lines 30-35 & Col 8,lines 54-66)

And determining a compatible version for the computer system. (See Col 9, lines 32-38). Furthermore, Apfel method's allows the system to upgrade or install features that haven't been completely developed due to time constraints caused by schedule release dates. The software manufacture may know of a future date when the features will be completely developed thus creating a need for a system that can automatically check for an upgraded module feature on a predetermined basis.

Apfel shows a method of querying any version of the first software component and the second software component and determining a compatible version for the computer system in an analogous art for the purpose of automatically updating a software program module stored on a computer.

Therefore it would have been obvious to a person of ordinary skill in the art at the time of the invention to add a software component version-querying feature and a process for determining a compatible version to Fiske's invention to reduce consumer's manufacturing and shipping costs of materials due to the software manufacturer's changing or "slippage" of the upgraded features' release date(s).

The modification would have been obvious because one of ordinary skill in the art would have been motivated to automatically upgrade software program modules while reducing manufacturing and shipping costs of diskettes, CD-ROMS, or other data storage media of upgraded software materials.

9. Claims 6,7,13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiske in view of Kraml. (6,493,594)

As set forth above in the rejection of 35 U.S.C. 102,

With respect to claims 6 and 13, Fiske discloses a software upgrading method in accordance with claims 1 and 9, but does not disclose wherein said upgrading comprises adding new features and said validating comprises disabling the new features.

Kraml teaches wherein said upgrading comprises adding new features (See Col 5, lines 8 – 14, "As by adding a new target") and said validating comprises disabling the new features.(See Col 5, lines 41-43, "If the security record is not correct, then the system controller does not invoke the software definition file"). Kraml's method prevents an inappropriate or unauthorized system definition file from being invoked by the system controller.(See Col 2, lines 65-67)

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to disable new software upgraded features that have not been validated.

The modification would have been obvious because one of ordinary skill in the art would have been motivated to provide a system and method for automatically providing appropriate configuration and control information to a multi-module hardware system when the hardware system is updated. (See Col 1, lines 50-54)

With respect to claims 7 and 14, Fiske discloses an upgrading method in accordance with claims 6 and 13 but does not disclose further comprising activating the new features if the validating is acceptable.

Kraml discloses further comprising activating the new features if the validating is acceptable. (See Col 5, lines 40-41, "before the software definition file is invoked. If the security record is correct, then the system controller invokes the software definition file.)

Kraml's method teaches that the addition of new validated features will give an appropriate or authorized system definition file to be invoked by the system.
Kraml shows wherein said upgrading comprises adding new features if the validating is acceptable in an analogous art for the purpose of invoking an appropriate system definition file. (See Col 2, lines 65-67)

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to activate new upgraded features that have been validated
The motivation for doing so would have been to provide a system and method for automatically providing appropriate configuration and control information to a multi-module hardware system when the hardware system is updated.(See Col 1, lines 50-56)

Response to Arguments

10. Applicant's arguments filed on June 15, 2002 have been fully considered but they are not persuasive. Following is the Examiner's response to Applicants' arguments.

With respect to claims 1,9,18,and 22, Applicant essentially argues that Fiske et al. does not anticipate the features of these claims because Fiske et al. does not teach or suggest "upgrading the first software component to an upgraded version; and validating the performance of the upgraded first software component, said validating comprising translating messages originating at the first software component from an upgraded version format to a current version format".

In response, the Examiner disagrees, notes Col 1:59-67, Fiske teaches that an upgraded version of a program is taken into the processor's memory along with a backup copy of the program. The Examiner also, notes Col 2:25-29, here Fiske discloses after upgrade installation is completed and confirmed the upgrading process may be performed on the second server. A program is considered to be a combination of modular software routines or components that can be combined with other components to form an overall program. Thus, Fiske does disclose upgrading a first software component to an upgraded version.

In addition, Applicant essentially argues that Fiske et al does not disclose translating messages originating at the first software component from an upgraded version format to a current version format.

In response, the Examiner disagrees, notes Col 4:52-67, here Fiske discloses the first processor sending the second processor upgrade information currently on the first processor for compatibility confirmation. Also, Fiske teaches that if the upgrade running on the first processor contains new messages in the protocol, the upgrade will run in compatibility mode, which consists of sending messages to the second processor that were previously recognized or translated by the second processor. Thus, Fiske discloses translating messages originating at the first software component from an upgraded version format to a current version format.

Conclusion

11. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark P. Francis whose telephone number is (571)272-7956. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571)272-3719. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ANIL KHATRI
PRIMARY EXAMINER